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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. **2010-292**

12 **JAMES ANDREW FULLTON**
13 **P.O. Box 2433**
14 **Mission Viejo, CA 92690**

A C C U S A T I O N

15 **Registered Nurse License No. 531095**
16 **Nurse Practitioner Certificate No. 11514**
17 **Clinical Nurse Specialist Certificate No. 823**

Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
23 of Consumer Affairs.

24 2. On or about March 25, 1997, the Board of Registered Nursing issued Registered
25 Nurse License Number 531095 to James Andrew Fullton (Respondent). The Registered Nurse
26 License was in full force and effect at all times relevant to the charges brought herein and will
27 expire on October 31, 2010, unless renewed.

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3. On or about April 13, 2000, the Board of Registered Nursing issued Nurse Practitioner Certificate Number 11514 to Respondent. The Nurse Practitioner Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2010, unless renewed.

4. On or about January 15, 1999, the Board of Registered Nursing issued Clinical Nurse Specialist Certificate Number 823 to Respondent. The Clinical Nurse Specialist Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2010, unless renewed.

JURISDICTION

5. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

6. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

7. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

STATUTORY PROVISIONS

8. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

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1 9. Section 2761 of the Code states in pertinent part:

2 The board may take disciplinary action against a certified or licensed nurse
3 or deny an application for a certificate or license for any of the following:

4 (a) Unprofessional conduct, which includes, but is not limited to, the
5 following:

6

7 (d) Violating or attempting to violate, directly or indirectly, or assisting in
8 or abetting the violating of, or conspiring to violate any provision or term of this
9 chapter [the Nursing Practice Act] or regulations adopted pursuant to it.

10 10. Section 2762 of the Code states in pertinent part:

11 In addition to other acts constituting unprofessional conduct within the
12 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for
13 a person licensed under this chapter to do any of the following:

14 (a) Obtain or possess in violation of law, or prescribe, or except as directed
15 by a licensed physician and surgeon, dentist, or podiatrist administer to himself or
16 herself, or furnish or administer to another, any controlled substance as defined in
17 Division 10 (commencing with Section 11000) of the Health and Safety Code or
18 any dangerous drug or dangerous device as defined in Section 4022.

19 (b) Use any controlled substance as defined in Division 10 (commencing
20 with Section 11000) of the Health and Safety Code, or any dangerous drug or
21 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent
22 or in a manner dangerous or injurious to himself or herself, any other person, or
23 the public or to the extent that such use impairs his or her ability to conduct with
24 safety to the public the practice authorized by his or her license.

25 11. Section 4022 of the Code states

26 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
27 self-use in humans or animals, and includes the following:

28 (a) Any drug that bears the legend: "Caution: federal law prohibits
dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this
device to sale by or on the order of a _____," "Rx only," or words of similar
import, the blank to be filled in with the designation of the practitioner licensed to
use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully
dispensed only on prescription or furnished pursuant to Section 4006.

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1 12. Section 4060 of the Code states, in pertinent part, that no person shall possess any
2 controlled substance, except that furnished to a person upon the prescription of a physician,
3 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

4 COSTS

5 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
6 administrative law judge to direct a licentiate found to have committed a violation or violations of
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
8 enforcement of the case.

9 DRUGS

10 14. Methamphetamine is a Schedule II controlled substance as set forth in Health &
11 Safety Code section 11055(d)(2) and is a central nervous system stimulant.

12 15. Ecstasy is a Schedule I controlled substance as set forth in Health & Safety Code
13 section 11054(d)(4) and is the street name for 3-4 methylenedioxy-methamphetamine. It is a
14 synthetic, psychoactive (mind-altering) drug with hallucinogenic and amphetamine-like
15 properties.

16 FACTS

17 16. On or about March 7, 2006, police performed a consent search of a hotel room
18 registered to S.M. Respondent was present in the hotel room at the time of the search.
19 Respondent consented to the search of his person by police officers. Police found a small nylon
20 pouch in the right trouser pocket of Respondent's shorts and observed 2 syringes protruding from
21 the pouch. Police asked Respondent what the syringes were for and Respondent informed them
22 that they were for injecting methamphetamine. A further search of the pouch revealed 3.9 grams
23 of ice methamphetamine, four blue ecstasy pills, a small glass vial with liquid methamphetamine,
24 and a blue rubber tie-off band for injecting. Respondent told police that he had been using
25 methamphetamine for about two years and had purchased it six times. Respondent told police
26 that he buys five grams of methamphetamine at a time and that it usually lasts him about three
27 weeks. Respondent told police that on this day, he was providing the methamphetamine to the
28 other two occupants in the hotel room. Respondent was arrested for possession of

1 methamphetamine, possession of ecstasy, sales of methamphetamine and possession of drug
2 paraphernalia (syringes).

3 17. On April 18, 2006, in the San Diego Superior Court, case number CD197521, entitled
4 *People v. James Andrew Fulton*, Respondent pled guilty to possession of a controlled substance
5 in violation of Health and Safety Code section 11377(a). Respondent's application for deferred
6 entry of judgment pursuant to Penal Code section 1000 was granted and judgment was deferred
7 for 18 months under the following terms and conditions: Respondent is to enroll in a diversion
8 program and pay fees and fines in the amount of \$200.

9 FIRST CAUSE FOR DISCIPLINE

10 (Unprofessional Conduct – Possession of Controlled Substances Without a Prescription)

11 18. Respondent is subject to disciplinary action under sections 2761, subdivisions (a) and
12 (d) and 2762, subdivision (a) of the Code, in that on or about March 7, 2006, Respondent
13 possessed the Schedule I controlled substance ecstasy and the Schedule II controlled substance
14 methamphetamine without a prescription in violation of section 4060 of the Code as described in
15 paragraphs 16 and 17 above.

16 SECOND CAUSE FOR DISCIPLINE

17 (Unprofessional Conduct – Use of a Controlled Substance)

18 19. Respondent is subject to disciplinary action under sections 2761, subdivision (a) and
19 2762, subdivision (b) of the Code in that on or about March 7, 2006, Respondent used, and
20 admitted using, methamphetamine, a controlled substance, that he obtained without a prescription
21 as described in paragraphs 16 and 17 above. Such self-treatment with a Schedule II narcotic was
22 dangerous and potentially injurious to Respondent.

23 PRAYER

24 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
25 and that following the hearing, the Board of Registered Nursing issue a decision:

26 1. Revoking or suspending Registered Nurse License Number 531095 issued to James
27 Andrew Fullton;

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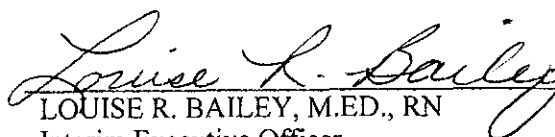
1 2. Revoking or suspending Nurse Practitioner Certificate Number 11514 issued to James
2 Andrew Fullton;

3 3. Revoking or suspending Clinical Nurse Specialist Certificate Number 823 issued to
4 James Andrew Fullton;

5 4. Ordering James Andrew Fullton to pay the Board of Registered Nursing the
6 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
7 Professions Code section 125.3; and

8 5. Taking such other and further action as deemed necessary and proper.
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11 DATED: 12/15/09


LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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